

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

NICHOLAS M. ZAGOTTA,

Debtor.

Case No. 20-00242-jwb  
Chapter 7  
Hon. James W. Boyd  
Date filed: January 23, 2020

THOMAS A. BRUINSMA,

Plaintiff,  
v.

Adversary Proceeding No. 20-80169

NICHOLAS M. ZAGOTTA; JAMIE L.  
ZAGOTTA, individually and as Trustee of the  
JAMIE L. ZAGOTTA REVOCABLE TRUST  
dated December 19, 2016; and All Other  
Occupants of 3794 Lake Birch Street, N.E.,  
Grand Rapids, Michigan 49525,

Defendants.

**APPELLANT'S STATEMENT OF ISSUES AND DESIGNATION OF  
ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Federal Rule of Bankruptcy Procedure 8009(a)(1), Appellant Thomas A. Bruinsma, Chapter 7 Trustee, submits the following statement of issues and designates the following record entries for his appeal of the Bankruptcy Court's February 9, 2023 Order Regarding Cross Motions for Summary Judgment.

**STATEMENT OF ISSUES**

In this case, a creditor of the Debtor asserted unjust enrichment claims against Debtor's spouse and her trust and sought imposition of a constructive trust over the Michigan property that Debtor's spouse's trust purchased with funds fraudulently obtained by Debtor from the creditor. The creditor subsequently assigned its interest in any constructive trust over the Michigan Property to the Trustee who in turn asked the Bankruptcy Court to impose a constructive trust on the

Michigan property, both as assignee of the creditor and on behalf of the bankruptcy estate. This case poses the following questions:

1. Whether the Bankruptcy Court erred when it held that the Trustee, standing in the shoes of the creditor, was not, as a matter of law, entitled to imposition of a constructive trust over the Michigan property and held that there were no disputed issues of material fact that the funds for the Michigan property could not be traced to the creditor's contribution to Debtor.
2. Whether the Bankruptcy Court erred when it held that the Trustee, standing in the Debtor's shoes, was not, as a matter of law, entitled to imposition of a constructive trust over the Michigan property because the Bankruptcy Court concluded that the Trust's retention of the Michigan property was not unjust despite the fact that the Michigan property was purchased with the money Debtor fraudulently obtained.

## **DESIGNATION OF THE RECORD**

### **Docket entries in Adversary Proceeding No. 20-80169**

	<b>Docket #</b>	<b>Description</b>
1.	1	Trustee's Complaint to Compel Turnover of Property and, in the Alternative, Avoid and Recover Fraudulent Transfer (and accompanying exhibits)
2.	9	Defendants' Motion to Dismiss Adversary Proceeding
3.	19	Trustee's Amended Complaint (and accompanying exhibits)
4.	25	Defendants' Answer to Complaint & Counterclaim Against Trustee
5.	26	Trustee's Answer to Counterclaim Filed
6.	43	Defendants' Motion for Summary Judgment Filed by Defendants
7.	44	Defendants' Brief in Support of Motion for Summary Judgment
8.	45	Trustee's Motion for Summary Judgment Filed
9.	46	Trustee's Brief in Support of Motion for Summary Judgment
10.	46-1	Trustee's Statement of Material Undisputed Facts in Support of Motion for Partial Summary Judgment (and all accompanying exhibits)

	<b>Docket #</b>	<b>Description</b>
11.	47	Defendants' Supplemental Exhibit - Statement of Undisputed Material Facts
12.	48	Scheduling Order Regarding Cross Motions for Summary Judgment
13.	49	Stipulated Motion to Dismiss Adversary Proceeding As to Counterclaim Only
14.	50	Trustee's Response to Defendants' Motion for Summary Judgment
15.	51	Trustee's Response to Defendant's Supplemental Exhibit - Statement of Undisputed Material Facts
16.	52	Defendants' Response to Trustee's Motion for Summary Judgment
17.	53	Defendants' Response to Trustee's Statement of Material Undisputed Facts
18.	54	Order to Dismiss Defendant's Counterclaim
19.	55	Order Regarding Supplemental Briefing on Cross Motions for Summary Judgment
20.	57	Trustee's Supplemental Brief in Opposition to Defendants' Motion for Summary Judgment
21.	58	Defendants' Supplement Brief in Support of their Motion for Summary Judgment
22.	59	Transcript regarding 06/30/22 Hearing on Cross Motions for Summary Judgment
23.	60	Opinion Regarding Cross Motions for Summary Judgment
24.	61	Order Regarding Cross Motions For Summary Judgment
25.	62	Notice of Appeal and Statement of Election
26.	63	Corrected Notice of Appeal and Statement of Election

**Docket entries in *In re Zagotta*, No. 20-00242-jwb**

	<b>Docket #</b>	<b>Description</b>
1.	12	Creditors Jorie LP, Alfred Koplin's Motion for Relief from the Automatic Stay
2.	13	Creditors Jorie LP, Alfred Koplin's Request for Expedited Hearing
3.	15	Notice of Hearing Re: Creditors Jorie LP, Alfred Koplin's Motion for Relief from the Automatic Stay
4.	17	Creditors Jorie LP, Alfred Koplin's Amended Motion for Relief from the Automatic Stay
5.	30	Order Granting Creditors Jorie LP, Alfred Koplin's Motion for Relief from the Automatic Stay
6.	53	Trustee's Application to Employ Timothy Hillegons as Special Counsel
7.	61	Order Approving Trustee's Application to Employ Timothy Hillegons as Special Counsel
8.	69	Trustee's Motion for Settlement Between Jorie, LP, Alfred Koplin and Trustee Regarding Various Matters
9.	71	Order Approving Agreement Between Jorie, LP, Alfred Koplin and Trustee Regarding Various Matters

**Proofs of claim filed against Nicholas Zagotta, Case No. 20-00242-jwb**

	<b>Proof of Claim #</b>	<b>Description</b>
1.	5-1	Creditor Jorie, L.P.
2.	6-1	Creditor Alfred N. Koplin

Dated: March 9, 2023

By: /s/ Emily S. Rucker

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